

## EXCERPTS FROM DEPARTMENT'S RECORD

- CORRESPONDENCE FROM TODD MEROLLA
  - LETTER DATED AUGUST 20, 2009
  - LETTER DATED APRIL 17, 2009
  - LETTER DATED APRIL 7, 2009
  - LETTER DATED FEBRUARY 26, 2009
  - LETTER DATED FEBRUARY 20, 2009
  - LETTER DATED JANUARY 27, 2009
  - LETTER DATED JANUARY 8, 2009



Page 1 of 4

August 20, 2009

e-mail: [todd@TPMLIMITED.com](mailto:todd@TPMLIMITED.com)

Maine Department of Environmental Protection  
Bureau of Land and Water Quality  
Division of Land Resource Regulation

Attention Please: Jim Cassida, Acting Director, Lorraine Kelly and Colin Clark,  
Field Services and Enforcement Officer

re: Application # L-24420-4P-A-N Southport  
Southport Tax Map #25, Tax lot 12-3 (formerly  
part of 12-1) Owners: Michael E. and Diane W.  
Traphagen, DEP Field Determination ID # 6280  
and July 31, 2009 documentation of tributary  
stream location by Richard P. Baker, Shoreland  
Zoning Coordinator

Please accept the following as response and protest to the unsigned and undated DEP "Department Order" Draft Decision with cover letter dated and received August 18, 2009 and with response due August 25, 2009 by 5:00PM. My request for a public hearing of this matter was not approved by the DEP. Although the application number remains the same, this application bears little resemblance to the original. I contest this draft decision on the basis of a substantial amount of misinformation having been submitted.

The third time the Southport Code Enforcement Officer, Ralph Spinney, found many major trees being cut down without a permit in the immediate area of the proposed dock and access, he called the DEP to the site. This is where this case began.

The Town of Southport has extremely narrow parameters when considering a dock application. The Town relies upon the DEP to make a thorough review of the accuracy and veracity of information submitted by an applicant or his agent. The DEP has found the information submitted by the applicant and the applicant's agent, L. Stockwell, to be repeatedly false and/or misleading.

Consideration of "operational need" is not supported by someone attempting to improve the commercial value of a parcel of land which has not even been established as a building lot. Would this requested permit then be used as authorization to cut down even more trees to open up the view of the water from the advertised lot? Access to this proposed dock is within approximately 30 feet of the documented tributary stream/wetlands of special significance.

Citing a lack of operational need, the DEP recently denied another permit application for a dock at the first house on the left on Joppa Road, Southport: Map 4, Lot 13. The spec house was under construction by Poland Builders and, of course, no one was in residence. → False, L-23170-9F-A-N was approved on 8-30-06

On page 2 of the Draft Decision, the following statement appears: "The applicants stated that due to the proximity of the proposed project, the shell midden will not be disturbed or altered." A report by the Maine Archeological Society titled "The Cameron Point Excavation at Southport Island, Maine," which describes and presents numerous photographs of the many artifacts already discovered at the site, has been previously submitted to the DEP along with a statement in a letter from the Penobscot Nation, dated November, 2008 by Bonnie Newsom, THPO. She requests: "If Native American cultural materials are encountered during the course of the project, please contact me." Early in June, as Southport Code Enforcement officers measured and found a major discrepancy between staked 75 foot Shorelands set-back and an actual measurement of 58 feet, Code Enforcement Officer, Henry Berne observed and remarked about the shells of the shell midden at the exact location of the proposed dock where the mound extends north from the previously excavated site.

On page 3 of the Draft Decision, mention is made that "According to Geographic Information Systems (GIS) mapping software, there are no mapped areas of significant wildlife habitats or inland fishery habitat associated with proposed project site." Regardless of any GIS mapping having been accomplished, there exists on the subject lot deer, moose on occasion, rabbits, skunks, porcupine, mink, squirrels, red fox, fishers, chipmunks, red squirrels, ospreys, eagles, other migratory birds, salamanders, turtles; a large variety of wetland plant life and lady slippers. The applicant's agent has also been deficient with regard to identifying marine life in the area of the proposed dock.

A statement on page 3 of the Draft Decision reads: *"The applicants investigated the use of nearby boat launching facilities and marinas. The only public pier is on Southport Island and is known as the Newagen Town Landing. There is no large boat launch at this facility; the pier allows use by skiffs only. Further, there is a waiting list of several years for moorings in Townsend Gut. The Town of Southport has recently bought a parcel in Cozy Harbor and the construction of facilities, such as a pier, are still in the discussion stage. The waiting list for Cozy Harbor is over 10 years. A boatyard is present in the Town of Southport, known as the Boothbay Region Boatyard. However, the applicants stated that this facility is considerably costly. Due to the restrictions presented by these locations, the applicants determined that these alternatives were not feasible. The applicants acknowledged that they have a pier on property that they own in the Town of Boothbay. However, the applicants wish to have access to the resource on the site of the proposed project."* With all this detailed investigation, and whereas the Newagen Town Landing is more than 5 miles away, the applicant fails to mention a large, free, public launching ramp and dock less than 1/2 mile away from the proposed dock site, also on Townsend Gut. In addition, whereas the applicant states the necessity of the proposed dock for his 39 foot and 20 foot boats, he no longer owns the 39 foot boat and maintains the 20 foot boat at his nearby, new 40 foot dock.

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Please include the eleven letters which I have previously submitted to the file in response to the continually changing specifications of this application and in protest to the requested DEP approval. The dates of my letters are: May 19<sup>th</sup>, 2008, November 12<sup>th</sup>, 2008, November 17<sup>th</sup>, 2008, January 8<sup>th</sup>, 2009, January 26, 2009, January 27<sup>th</sup>, 2009, February 20, 2009, February 26<sup>th</sup>, 2009, March 10<sup>th</sup>, 2009, March 11<sup>th</sup>, 2009 and April 17<sup>th</sup>, 2009.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd Park Merolla", is written over a large, horizontal oval scribble.

Todd Park Merolla  
Cc: M. Cooper, Esq.



Page 1 of 8

April 17, 2009

e-mail: [todd@TPMLIMITED.com](mailto:todd@TPMLIMITED.com)

Maine Department of Environmental Protection  
Bureau of Land and Water Quality  
Division of Land Resource Regulation

Attention Please: Jim Cassida, Acting Director, Beth Callahan, Project Manager  
and Colin Clark, Field Services and Enforcement Officer

re: Application # L-24420-4P-A-N Southport  
Southport Tax Map #25, Tax lot 12-3 (formerly  
part of 12-1) Owners: Michael E. and Diane W.  
Traphagen, DEP Field Determination ID # 6280

Please accept the following as response and protest to the unsigned DEP "Department Order" Draft Decision with cover letter dated and received April 15<sup>th</sup>, 2009 and with response due April 16<sup>th</sup>, 2009 by 12:00PM. This misstated deadline was subsequently corrected by Jim Cassida and changed to April 21, 2009 by 5:00 PM. My initial request for a public hearing of this matter has been denied by the DEP and we are now past the documented DEP Statutory Final Decision date of April 8<sup>th</sup>, 2009. (Please see Exhibit 1)

Page 1, 1. A- On October 15, 2007, Colin Clark and Chris Redmond (also an enforcement officer,) thoroughly inspected the subject site, including a large plateau on the western half of the property. Whereas the stream had sometime in the past been "reinforced" with small river stones in the immediate area of the moss-covered bridge, it was determined that the stream, as per NRPA definition, starts approximately twelve feet downstream from the moss-covered bridge which exists at the northernmost edge of the property line and where a spring feeds into the stream.

The result of two field determinations (#6119 & #6280) was that there is a stream present on the subject lot, NOT a "man-made drainage ditch" as stated by the applicant.

On February 13<sup>th</sup>, 2007, Lauren Stockwell, agent for the Traphagens, states in a letter to Bruce Tindal, Real Estate Broker for Traphagens, who has listed this lot for sale since 2005, that "Wetlands and streams are regulated at the State level under the Natural Resources Protection Act (NRPA) (38 MRSA Sect. 480-A to 480-Z) by the Maine Department of Environmental Protection (DEP.) Under this regulation, the freshwater wetland on the property meets the definition of freshwater wetland of special significance (WOSS) because it is located within 250 feet of a coastal wetland." (Letter attached, please see Exhibit 1-A)

On June 30, 2008, Lisa Vickers, a then DEP staff member in Augusta, accompanied Stockwell to the subject site in order to re-determine the start of the stream, once again, in accordance with NRPA definition. While on Southport, Vickers visited the Southport Town Hall and told Southport Code Enforcement Officer, Ralph Spinney that she was not aware of the previous DEP stream location determination made by Chris Redmond and Colin Clark. Then also on June 30, 2008, Stockwell sent an e-mail to Vickers stating "I considered the upper portion (furthest from the coast) to be wetland and the end closest to the shore to be wetland with a small intermittent stream. Again, I was not aware that the swale had been dug out by backhoe when I made my determination or I would have considered the upper end to be a ditch." (Letter attached, see Exhibit 2)

On October 6, 2008, Vickers writes to Stockwell "Based on my site visit, I estimate the stream begins in the vicinity of picture labeled as #10 and indicated with an arrow. Please note that this is *only an estimate* (sic,) based on the pictures and has been determined by the definition of a river, stream, or brook defined in 38 MRSA Sect. 480-B of the Natural Resources Protection Act (NRPA.)" "I did not see a channel between defined banks as indicated by pictures labeled 1-8." At the direction of Traphagen to "clear the land for construction," Boothbay Tree and Landscape Co. felled many large trees along the shoreline without a permit and dragged the enormous tree trunks with an engine-powered winch through the property, through the stream bed and to the

road, resulting in unclear stream bank definition in the section of the stream which Vickers is referring to. After three visits to stop this illegal tree removal/clearing, Ralph Spinney called the DEP to the site. (Letter attached, see Exhibit 3)

B.- This summary is based upon the unsubstantiated opinion of Stockwell that the subject stream is "intermittent" and "low value." The dimensions stated are under-estimated and the proposed stream relocation setback dimensions are based upon a misstated location of the start of the stream. The 75 foot, 18" culvert specified by Knickerbocker Group Builders, which has been specified at various lengths throughout the application process, is proposed to redirect the existing tributary stream uphill, irregardless of natural flow. In addition, there is not one, but TWO 18" culverts feeding the stream along with natural drainage from my entire garden and the before-mentioned spring which would now be directly under the northwestern corner of the proposed house. The amount of fill necessary to establish the proposed house above existing and sometimes flooded grade, along with insufficient proposed capacity for the proposed relocated stream combine to insure that my property would become periodically flooded and at best, remain permanently wet. \*

In addition to the relocation of a tributary stream, two building sites, driveways and septic area, a new dock is proposed. In addition to the DEP customarily denying dock permits on the basis of a lack of "operational necessity" in an instance where there is no existing residence, the application for a dock does not meet the land use ordinance requirements of the Town of Southport. Application for a dock is made to the DEP on the basis of a purported "elderly gentleman" who may be interested in purchase of the lot. W401

C.- In addition to the moss-covered bridge that constitutes part of the legally-defined easement/existing driveway accessing my property, there exists a wooden bridge, closer to the ocean, which spans the tributary stream and wetlands. The proposed plan illegally redirects my driveway, making a sharp turn to the north and along with then terminating it in the middle of the stream, makes access of utility repair vehicles impossible. CIV-2

2. Mention is made of "department staff" visiting the proposed project site on March 11, 2009. Previously, Beth Callahan had assured me that she would be unable to inspect the property while there was still snow cover. There was still plenty of snow on the ground until the very end of March 2009.

I have submitted a report by the Maine Archeological Society titled "The Cameron Point Excavation at Southport Island, Maine." It is this report, not I, that delineates all the Native American artifacts found within a limited area of a very large shell midden which extends along much of the shoreline of the subject lot, including the area of the proposed dock/pier site. In a letter from the The Penobscot Nation on approximately November 21, 2008, Bonnie Newsom, THPO states "If Native American cultural materials are encountered during the course of the project, please contact me." (Letter attached, please see Exhibit 4)

Handwritten note: "HINT: we do make best."

3.- "...blasting may be anticipated for utilities and/or drainage systems." Should the anticipated blasting take place; a neighbor's potable water well at very close proximity to the proposed construction site areas will likely be affected.

"The interested party disagreed with DEA's recommendations and asserted that an over-sized and buried culvert would increase the likelihood of flooding in the area and is incompatible with the natural setting of the area." I have not stated anything which could be interpreted as an over-sized culvert causing flooding.

What I have great concern about, as mentioned above, is flooding caused by first, not having the DEP/Tier 3-required 2 foot interval topographical map to establish existing and proposed elevations on this site, and second, insufficient provision for accommodating water flow from two 18" culverts, natural drainage from large, open garden areas, including a stone swale which directs flood water to the existing stream and the natural flow of water from the contributory spring. All of this resulting flooding will be further exacerbated by substantial fill used in proposed building and driveway areas. Also, it does not take much imagination to feature what large areas of riprap and 75 feet of exposed concrete conduit would look like in the very middle of a natural woodland setting between the tributary stream, wetlands and the ocean.

Handwritten note: "f/t/s"

4.- Irregardless of GIS mapping having been accomplished, there exists on the subject lot deer, moose on occasion, rabbits, skunks, porcupine, mink, squirrels, red fox, fishers, chipmunks, red squirrels, ospreys, eagles, other migratory birds, salamanders, turtles, a large variety of wetland plant life and lady slippers. The applicant's agent has been deficient with regard to identifying marine life in the area of the proposed dock. The DMR recommended that construction should only be done when no water is present in the stream. The fact is that even on the driest day of July, there is always water present in the tributary stream.

ALT 1/4  
6.- "...50 square feet of freshwater wetlands of special significance associated with the stream bed will be impacted." Due to grossly incorrect dimensions associated with the amount of tributary stream being impacted by the proposed development, this figure, once again, is vastly underestimated. With no alternative development site considered, such as the other half of the property which lies to the west of the driveway, it does not seem reasonable to be impacting ANY of the wetlands of special significance. The grade necessary to transversely access the large plateau area on the western side of the property is no steeper than that being proposed on the eastern half. Both areas have large ledge outcroppings and areas of steep slopes. One area of major ledge outcropping dropping off in a steep slope to the tributary stream and wetlands of special significance to the south of the wooden bridge is directly adjacent to and below the area designated for a septic system. The setback of barely 75 feet as shown on the proposed plan of development is actually far less than 75 feet as horizontal measurement of areas of 30% slope or greater is not counted. In addition the Maine Subsurface Waste Water Disposal Rules specify a true 100 foot (horizontal,) set back of septic field area from wetlands of special significance. Again, the DEP-required 2 foot interval topographical map for Tier 3 applications would demonstrate this.

In October 2006, with the property being advertised for sale by the applicants' real estate broker, I was shown the property by a Maine-licensed real estate broker and brought both wetlands and surveying experts with me to determine the value of the parcel based upon potential for development. Whereas I had and continue to have no interest in building anything on the subject parcel and only wished/wish to continue to preserve this land as it had been in the past as part of my garden, still I recognize that as a building lot it would be more valuable. As a result, I have a survey by a Maine-licensed surveyor, Roderick H. Craib Jr. of Maine Coast Surveying which incorporates wetland and stream delineation by the highly regarded Soil Scientist, David Marceau of Gartley & Dorsky Engineering and Survey Inc. This stamped and certified survey, dated October 30, 2006 has been presented to Colin Clark at the DEP in Augusta. There are a number of substantial differences between this documented survey and what is claimed by the agent for the applicant regarding setbacks, wetlands and tributary stream delineation. These differences include far more accurate coastal shoreland 75 foot setbacks and tributary stream delineation shown by the October 30, 2006 survey along with wetlands being indicated at the

northernmost part of the stream, just south of the moss-covered bridge. This area continues to be described by the applicants' agent, (a wetlands delineator, not a soil scientist,) along with the opinion of several DEP employees (who are neither soil scientists nor wetlands delineators,) that this is a man-made drainage ditch which continues half way through the property. A brief glance at this lot (or a picture of this area, please see Exhibit 5,) demonstrates the tributary stream running south toward the ocean and under the wooden bridge in the distance with highly mature trees on well-defined banks. This is truly not the picture of a drainage ditch reportedly dug by Traphagen several years ago.

The reason that I "asserted" that the Department erred in its determination of the starting location of the stream is based upon the fact that David Marceau, a senior Maine-certified soil scientist/engineer, past president of the Society of Soil Scientists and member of the Maine Association of Site Evaluators is far better qualified to determine the starting point of a stream than someone who has the minimal certification of a wetlands delineator, no pertinent qualifications at all or, least of all, acceptance on the part of DEP personnel of carefully crafted but deceptive information about where the applicant claims to have dug a ditch.

"The Department considered the comments and survey plans submitted by the interested party. Based upon the evidence presented in Field Determination #6119 and Field Determination #6280 and Department staff's expertise and knowledge of the NRPA, the Department finds the stream designation and the starting location of the stream to be credible and in keeping with criteria established by the NRPA." Here the DEP acknowledges the credibility of the comments and survey plan which I have submitted. But then, in the next sentence, this draft decision reads: "Based upon the applicant's general knowledge of the project site and evidence provided in the Department permitting record, the Department finds the information provided by the applicants' (sic) to be credible." So which is it? Does the Department believe a noted soil scientist with a long list of pertinent credentials or the word of an applicant, claiming to have dug a ditch in order to pave the way for permit approval for the construction of a "spec" house. The applicant knows full well that a deed restriction by covenant which runs with the land disallows a second dwelling/apartment on this lot. The proposed plan submitted by the applicant clearly shows a second building with an apartment. I have previously submitted a copy of the deed to the DEP which details this restriction.

A.- "Avoidance. No activity may be permitted if there is a practicable alternative to the project that would be less damaging to the environment. Each application for a Natural Resources Protection Act permit must provide an analysis of alternatives in order to demonstrate that a practicable alternative does not exist." There is not any substantial evidence submitted by the applicant to demonstrate why a home cannot be built on the lot west of the road other than it "would be costly." A letter is submitted which is written by a house designer who is of the opinion that it would be better to build on the lot east of the road and closer to the ocean. There are no plans submitted which demonstrate why a house could not be built on the west side of the lot. And, again, there is no topographical survey to consult regarding feasibility. The amount of tree removal necessary to access a building site on the west side of the road pales in comparison with that necessary to construct what is shown on the proposed plan for the east side, along with the damage associated with previous and illegal tree removal.

In a letter dated November 20, 2008, Beth Callahan requested answers from Stockwell regarding information which is missing from the application. Included were eight concerns/questions. Six out of the eight questions remain unanswered by the applicants' agent. There is no response to the question of why "relocating the water drainage/stream ditch is a practical solution." The question concerning "why a house on the west side of the stream is not a practical solution from an environmental standpoint" remains unanswered. The question regarding "why Mr. Traphagen wants to undertake such a serious and speculative project when he ultimately plans to sell the lot and not undergo any of the development" has never been answered by the applicant. The biggest question remains: How can the DEP render a draft or final decision regarding this application with so much pivotal information still unanswered? (Please see Exhibit 6)

B.- The slope of the "shared driveway" is equal to or greater than a driveway which transversely accesses the alternative building site on the western side of the lot. A topographical survey would demonstrate comparative changes in grade.

C. The question of Compensation is answered by the applicants' agent with unqualified remarks "that the stream is low value," and that constructing two buildings, associated roads, parking areas and utilities, mowed lawns and a septic system (with no adequate space to put it delineated,) will not be cause for concern with regard to influence upon water quality and impact upon wetlands of special significance.

The reason that "The applicants do not propose to alter or fill 500 square feet or more of freshwater wetlands of special significance" is a function of the applicants' agent twisting the facts in an attempt to influence the designation of the start of the tributary stream. In the mind of the agent, who surely knows the drainage ditch story is fabricated, filling in all the area claimed to be "drainage ditch" is not filling in the area of tributary stream (or wetlands of special significance.) From this, the DEP concludes that the otherwise necessary compensation would not be required.

Beth Callahan explained to me that all the information submitted into the applicants' file by the applicants' agent must be considered to be true as the agent was required to sign an affidavit that all information submitted is true. It is with this understanding that the DEP "finds that the applicants have avoided and minimized wetland and waterbody impacts to the greatest extent practicable, and that the proposed project represents the least environmentally damaging alternative that meets the overall purpose of this project." Thus, many of the DEP conclusions reached within this draft decision have no more validity than the many misstatements offered by the agent of the applicants.

Please see attached Exhibit 6 which includes the following ten letters which I have previously submitted to the file in response to the continually changing specifications of this application and in protest to the requested DEP approval. The dates of my letters are: May 19<sup>th</sup>, 2008, November 12<sup>th</sup>, 2008, November 17<sup>th</sup>, 2008, January 8<sup>th</sup>, 2009, January 26, 2009, January 27<sup>th</sup>, 2009, February 20, 2009, February 26<sup>th</sup>, 2009, March 10<sup>th</sup>, 2009 and March 11<sup>th</sup>, 2009.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd Park Merolla", with a large, sweeping flourish extending to the right.

Todd Park Merolla

Cc: Mary Platt Cooper, Esq.



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

*Exhibit  
I*

JOHN ELIAS BALDACCIO  
GOVERNOR

DAVID P. LITTELL  
COMMISSIONER

December 10, 2008

Lauren Stockwell  
Stockwell Environmental Consulting  
58 Hendricks Hill Road  
Southport, ME 04576

**RE: DEP NRPA Application #L-24420-4P-A-N, Southport**

Dear Lauren:

Your clients' (Michael E. & Dianne W. Traphagen) application for a Natural Resources Protection Act (NRPA) was received by the Department of Environmental Protection on November 14, 2008 and found to be acceptable for processing on December 9, 2008. Please refer to the above referenced number for any future correspondence. Acceptance of the application does not preclude the Department from requesting additional information during processing.

The project is now being examined to determine whether a license can be issued. The statutory deadline for the Department to reach a final decision on your application is April 8, 2009. However, we will do our best to process the application and issue a decision as soon as possible. No construction activities at this project site may be started prior to receiving a final decision from the Department.

Please feel free to contact me at (207) 287-7898 or via email at [Beth.Callahan@maine.gov](mailto:Beth.Callahan@maine.gov) if you have any questions regarding this project.

Sincerely,

*Beth Callahan*

Beth Callahan  
Project Manager  
Division of Land Resource Regulation  
Bureau of Land & Water Quality

cc: Michael E. & Dianne W. Traphagen  
File

Exhibit  
I-A

**Stockwell Environmental Consulting**  
58 Hendricks Hill Road  
Southport, Maine 04576  
(Phone) 207-633-4417 (cell) 207-542-2421  
E-mail: stockenv@roadrunner.com  
www.stockenv.com

February 13, 2007

Bruce Tindal  
Tindal & Callahan  
32 Oak Street  
Boothbay Harbor, ME 04538

RE: Wetland and stream on the Traphagen property off Cameron Point Road in Southport, Maine

Dear Bruce,

At your request, I visited the Traphagen property off Cameron Point Road in Southport, Maine to look at natural resources on the property and how regulations would apply. The site visit was made on February 13, 2007 when there was patchy snow cover of 1 to 2 inches. The lot is located on the coast on Townsend Gut. There is a forested wetland that runs from the near the middle of the lot to coastal wetland along the Gut. A small intermittent stream channel forms approximately 100' inland from the edge of the coastal wetland.

Wetland and streams are regulated at the federal, state and local level. At the federal level, they are regulated by the Army Corps of Engineers (ACE) under the Clean Waters Act. The New England District of ACE issued a Programmatic General Permit (PGP)(Permit No: GP-39) to the State of Maine. The PGP expedites review of minimal impact work in Maine=s wetlands by allowing the state to review and permit small wetland impacts.

Wetlands and streams are regulated at the state level under the Natural Resources Protection Act (NRPA)(38 M.R.S.A. §§ 480-A to 480-Z) by the Maine Department of Environmental Protection (DEP). Under this regulation, the freshwater wetland on the property meets the definition of freshwater wetland of special significance (WOSS) because it is located within 250 feet of a coastal wetland. A Tier 3 permit would be required for impact to this wetland, although DEP can waive a permit to a Tier 1 or 2 if it determines that the activity will not negatively affect other protected resources.

The channel meets the NRPA definition of a river, stream or brook, which is:

- " A channel between defined banks. A channel is created by the action of surface water and has two or more of the following characteristics.
  - A. It is depicted as a solid or broken blue line on the most recent edition of the U.S. Geological Survey 7.5-minute series topographic map, or if that is not available, a

15-minute series topographic map.

- B. It contains or is known to contain flowing water continuously for a period of at least 6 months of the year in most years.
- C. The channel bed is primarily composed of mineral material such as sand and gravel, parent material or bedrock that has been deposited or scoured by water.
- D. The channel contains aquatic animals such as fish, aquatic insects or mollusks in the water or, if no surface water is present, within the stream bed.
- E. The channel contains aquatic vegetation and is essentially devoid of upland vegetation."

River stream or brook does not mean a ditch or other drainage way constructed and maintained solely for the purpose of draining storm water or a grassy swale."

This stream has the characteristics C and E. It probably also meets D, but the ice in the stream prevented me from determining this. Wetland within 25 feet of a stream also meets the definition of WOSS.

DEP has jurisdiction of 75 feet over land, either wetland or upland; adjacent to certain natural resources including streams and coastal wetland. With Permit-by-rule (PBR), soil disturbance within this 75-foot setback can be allowed if the applicant can demonstrate that there is no practicable alternative and a 25-foot undisturbed buffer is maintained. Disturbance within 25 feet of the stream or coastal wetland requires a full NRPA permit. DEP does not have adjacency jurisdiction next to the forested wetland as long as the disturbance is 75 feet or more from the edge of the stream and coastal wetland. In other words, there is no setback from the wetland in the interior of the lot, but there is a setback from the stream and coast.

The Zoning Ordinance of the Town of Southport would also apply. These require a 75' setback from the coast.

Please feel free to contact me if you have questions. I have enclosed an invoice for my work.

Sincerely,  
**Stockwell Environmental Consulting**

Lauren T. Stockwell  
Wetland Scientist/Botanist

Exhibit  
2

Vickers, Lisa

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**From:** Lauren [stockenv@roadrunner.com]  
**Sent:** Monday, June 30, 2008 12:06 PM  
**To:** Vickers, Lisa  
**Cc:** Michael Traphagen  
**Subject:** Traphagen  
**Attachments:** Traphagen stream letter.doc

Hi Lisa,

Thank you for coming down today to look at Michael Traphagen's site on Southport. As you requested, attached is the letter I wrote following my stream determination in February of last year. I considered the upper portion (furthest from the coast) to be wetland and the end closest to the shore to be wetland with a small intermittent stream. Again, I was not aware that the swale had been dug out by backhoe when I made my determination or I would have considered the upper end to be a ditch.

Let me know what the final DEP determination is about this site. Thank you.

Lauren

Stockwell Environmental Consulting

58 Hendricks Hill Road

Southport, ME 04576

207-633-4417

cell: 207-542-2421

fax: 207-633-4493

website: [www.stockenv.com](http://www.stockenv.com)

Exhibit  
3

Vickers, Lisa

---

**From:** Vickers, Lisa  
**Sent:** Monday, October 06, 2008 11:57 AM  
**To:** 'Lauren'  
**Subject:** Traphagen  
**Attachments:** Site Visit.doc

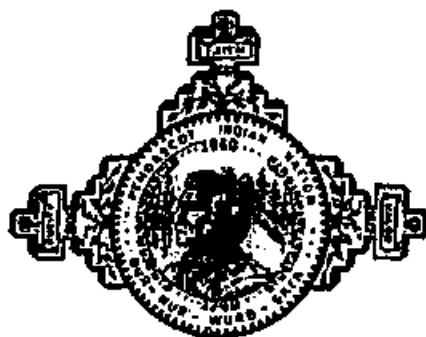
Hi Lauren,

I went through the pictures I took from the June 30, 2008 site visit to the Traphagen property. The two previous field determinations done by DEP staff determined that there was a stream present on the property; however, they did not delineate where the stream began. Based on my site visit, I estimate the stream begins in the vicinity of picture labeled as # 10 and indicated with an arrow. Please note that this is *only an estimate* based on the pictures and has been determined by the definition of a river, stream, or brook defined in 38 M.R.S.A Section 480-B of the Natural Resources Protection Act (NRPA). Specifically, there is a channel between defined banks, the channel bed is primarily composed of mineral material, and the channel is essentially devoid of upland vegetation. According to this definition, a stream is not present where there is not a channel between defined banks. I did not see a channel between defined banks as indicated by Pictures labeled 1-8. If you have any questions, please feel free to contact me.

Thanks,  
Lisa)

*Project Manager*  
Bureau of Land & Water Quality  
Division of Land Resource Regulation  
207-287-6266

Exhibit  
4



**PENOBSCOT INDIAN NATION**  
**BONNIE NEWSOM - ARCHAEOLOGY DEPARTMENT**  
**12 WABANAKI WAY, INDIAN ISLAND, ME 04468**  
**E-MAIL: [bnewsom@penobscotnation.org](mailto:bnewsom@penobscotnation.org) Fax: 207-817-7463**

NAME	Lauren T. Stockwell
ADDRESS	Stockwell Environmental Consulting 58 Hendricks Hill Road Southport, ME 04576
OWNER'S NAME	Michael E. and Dianne W. Traphagen
TELEPHONE	(207) 633-4417
FAX	
EMAIL	<a href="mailto:stockenv@roadrunner.com">stockenv@roadrunner.com</a>
PROJECT NAME	Proposed pile-supported pier
PROJECT SITE	Southport, ME
DATE OF REQUEST	November 13, 2008
DATE REVIEWED	November 21, 2008

Thank you for the opportunity to comment on the above referenced project. This project appears to have no impact on a structure or site of historic, architectural or archaeological significance to the Penobscot Nation as defined by the National Historic Preservation Act of 1966, and subsequent updates.

Also, if Native American cultural materials are encountered during the course of the project, please contact me at (207) 817-7332. - Thank you.


  
**BONNIE NEWSOM, THPO**  
Penobscot Nation

Exhibit  
5

WOODEN BRIDGE

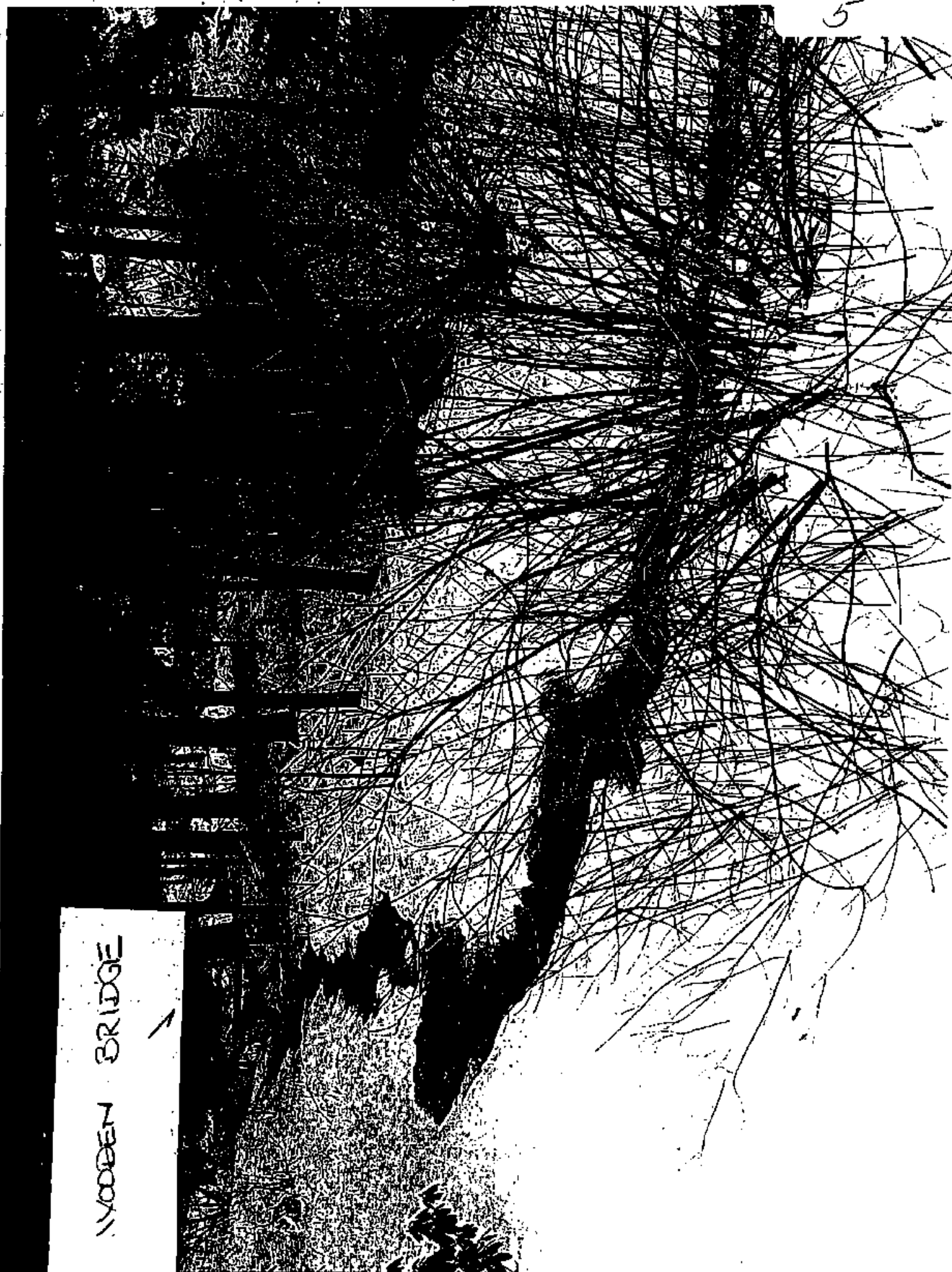


Exhibit  
6

**Callahan, Beth**

---

**From:** Callahan, Beth  
**Sent:** Thursday, November 20, 2008 8:48 AM  
**To:** 'Lauren'  
**Subject:** RE: Traphagen

Hi Lauren,

Not a problem. I'm really sorry to have bothered you while you were out walking.

Here's a mini-list of my requested info/concerns/questions about the Traphagen project so that you'll have a heads up before you call...

1. I need a more definitive site plan that shows the exact location of each feature. Just like what you did for the pier, I need to see a specific design for the house, driveway, garage, and culvert, rather than a tentative design and/or location. Culvert design should also include the length, width, and flow elevations. Because the driveway will be placed over the stream, I'll need to see a sideways site plan of the roadway design.
2. Please submit other development schemes that were considered as a part of the alternatives analysis.
3. I need to a more detailed construction plan that includes how the stream will be relocated, what equipment will be used, and a sequence of event.
4. In the construction plan of the application, the applicant states that construction is slated to occur in the late winter to spring. Very frequently, the Army Corps, DMR, and/or places timing restrictions on any type of in-stream work. Normally, these agencies request in-stream work to be limited to July 15 -October 1. A statement should be provided that reflects Mr. Traphagen's acknowledgement that timing restrictions should be expected.
5. I need to see a delineation for any wetlands on the property and especially any wetlands associated with the stream.
6. In Mr. Moore's letter (1<sup>st</sup> sentence of 2<sup>nd</sup> paragraph), he stated that relocating the water drainage/stream ditch is a practical solution. I'd like this to be expanded upon to see how this is an environmentally practical solution.
7. Also, Mr. Moore's letter states that the construction of the home on the west side is not practical due to the need for blasting, but yet the site plan shows that the garage/apartment will be built in this location. Please expand further to explain why the garage/ apartment can go in this location, but not the house, and why a house on the west side of the stream is not a practical solution from an environmental standpoint.
8. I noticed that Mr. Traphagen has plans to sell the lot, and the new owner will then develop the lot. Why doesn't the new owner file the application and take on the responsibility? It's hard to understand why Mr. Traphagen wants to undertake such a serious and speculative project when he ultimately plans to sell the lot and not undergo any of the development.

I realize that everything that I'm asking for is a lot to do, and will take a fair amount of time to prepare. Since my completeness deadline is in two weeks, I would prefer to return the application to Mr. Traphagen. If you prefer, I can formally file the application as deficient, but still hold onto the application and fee. By this method, you get the necessary info together, and not have to submit the application again. The application would just get a new number, and the clock would start all over again when the info is submitted.

We can talk about this more in detail when you call.

Thanks,  
**BETH CALLAHAN**  
*Project Manager*  
*Bureau of Land & Water Quality*  
*Division of Land Resources Regulation*  
(207) 287-7898

(1 of 6 pages)



Transmittal

Date: 4.07.09

To: Mr. James Cassida

RE: Traphagen Application # L-24420-4P-A-N, Southport

Enclosed: Letter from Callahan to Stockwell dated December 10, 2008, Letter from Merolla to Callahan dated March 10, 2009 and Letter from Merolla to Callahan dated March 11, 2009. The December 10, 2008 letter was not present in the Traphagen application file when I inspected the file on January 27, 2009. However, it appeared in the file upon subsequent inspection on March 10, 2009.

Remarks: Jim, I'm forwarding copies of the above letters which state the "statutory deadline for the Department to reach a final decision on the application is April 8, 2009" in addition to my specific requests to Callahan for a "copy of the DEP draft decision and final decision." I made this same request in most of my ten letters of protest to the DEP regarding the Traphagen application.

I look forward to hearing from you tomorrow regarding the draft decision which I have not received. I still do not understand how April 8, 2009 could have been both the deadline for response to the draft decision as well as the statutory deadline for the final decision.

I sincerely appreciate your helping in this matter.

Signed:

STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCIO

GOVERNOR

DAVID P. LITTELL

COMMISSIONER

December 10, 2008

Lauren Stockwell  
Stockwell Environmental Consulting  
58 Hendricks Hill Road  
Southport, ME 04576

RE: DEP NRPA Application #L-24420-4P-A-N, Southport

Dear Lauren:

Your clients' (Michael E. & Dianne W. Traphagen) application for a Natural Resources Protection Act (NRPA) was received by the Department of Environmental Protection on November 14, 2008 and found to be acceptable for processing on December 9, 2008. Please refer to the above referenced number for any future correspondence. Acceptance of the application does not preclude the Department from requesting additional information during processing.

The project is now being examined to determine whether a license can be issued. The statutory deadline for the Department to reach a final decision on your application is April 8, 2009. However, we will do our best to process the application and issue a decision as soon as possible. No construction activities at this project site may be started prior to receiving a final decision from the Department.

Please feel free to contact me at (207) 287-7898 or via email at [Beth.Callahan@maine.gov](mailto:Beth.Callahan@maine.gov) if you have any questions regarding this project.

Sincerely,

Beth Callahan  
Project Manager  
Division of Land Resource Regulation  
Bureau of Land & Water Qualitycc: Michael E. & Dianne W. Traphagen  
File

## AUGUSTA

17 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0017  
(207) 287-7668 FAX: (207) 287-7826  
RAY BLDG., HOSPITAL ST.

## BANGOR

106 HOGAN ROAD  
BANGOR, MAINE 04401  
(207) 941-4370 FAX: (207) 941-4584

## PORTLAND

312 CANCO ROAD  
PORTLAND, MAINE 04103  
(207) 822-6300 FAX: (207) 822-6303

## PRESQUE ISLE

1235 CENTRAL DRIVE, SKYWAY PARK  
PRESQUE ISLE, MAINE 04769-2094  
(207) 764-3477 FAX: (207) 760-3143

P.O. Box 260  
47 Cameron Point Lane  
Southport, ME 04576

March 10, 2009      Application #L-24420-4P-A-N,      Southport

Ms. Beth Callahan, Project Manager  
Bureau of Land and Water Quality, DEP  
17 State House Station  
Augusta, Me 04333-0017

re: Southport Tax Map #25  
Tax lot 12-3 (formerly part  
of 12-1) Owners  
Michael E. and Diane W.  
Traphagen  
DEP Field Determination  
ID #6280

Dear Ms. Callahan:

Thank you for arranging for me to have an updated look at the Traphagen file.

I have left a copy of my letter to the Southport Selectmen regarding the Traphagen dock application which, while it is only subject locally to setback and navigation requirements, at the same time it does not meet Southport Land Use Ordinance requirements for the reasons stated.

In addition, I am providing you with a copy of a certified/stamped wetlands delineation and setback survey dated October 30, 2006. I was instructed by Jim Cassida to have the "Person On Call" verify that this is a true and accurate copy of the original stamped version. Please note that shoreland and fresh water wetland setbacks and stream designations are substantially different from the applicant's. Here, Dave Marceau, Wetlands Soil Scientist, has documented wetlands, stream location and point of origin, showing substantial differentiation from the several sources of this information already submitted to the file including the field determination by Chris Redmond and Colin Clark and then subsequently by Lisa Vickers. However, no survey information has been submitted to the file which can be used to adequately determine existing and pronounced topography. This includes large ledge outcroppings, steep slopes including ledge and a steep slope adjacent to proposed septic

Page 2

system area as well as being directly above wetlands of special significance, tidal incursion to the tributary stream, consequences of proposed (and illegally,) re-routed 15' wide easement, consequential drainage problems and other damage to my adjacent property as a result of proposed stream relocation and major grade changes, missing information regarding set-back from proposed construction to proximate potable well and consideration of an alternative building site.

Will you kindly include this letter as a further letter of protest within the Traphagen file along with my previous letters of May 19, 2008, November 12<sup>th</sup> and 17<sup>th</sup>, 2008 and January 8<sup>th</sup>, 26<sup>th</sup>, 27<sup>th</sup> and February 20<sup>th</sup> and 26<sup>th</sup>, 2009. Again, although I realize that your physical, planned DEP inspection of the lot site conditions cannot be confirmed while there is still snow cover, I request a copy of the DEP Draft Decision and Final Decision.

With sincere thanks,



Todd Park Merolla

Cc: Mr. Jim Cassida, Mr. Colin Clark, Mary Platt Cooper, Esq.

P.O. Box 260  
47 Cameron Point Lane  
Southport, ME 04576

March 11, 2009      Application #L-24420-4P-A-N,      Southport

Ms. Beth Callahan, Project Manager  
Bureau of Land and Water Quality, DEP  
17 State House Station  
Augusta, Me 04333-0017

re: Southport Tax Map #25  
Tax lot 12-3 (formerly part  
of 12-1) Owners  
Michael E. and Diane W.  
Traphagen  
DEP Field Determination  
ID #6280

Dear Ms. Callahan:

Again, thank you for arranging for me to have an updated look at the Traphagen file yesterday.

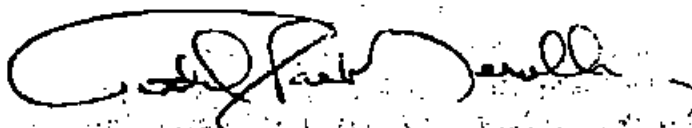
Newly added information to the file, including comments from DEP-requested reviewers, continues to be based upon information other than that indicated within the DEP field determination document. A recent example of this is where Ms. Stockwell, in a letter to the DEP dated February 25<sup>th</sup>, 2009, references comments by Tom Danielson, biologist from the DEP's Biological Monitoring Unit. Mr. Danielson apparently recommends, (there are no notes in the file from him,) improvement to the applicant's proposal by over-sizing the culvert and sinking it part way into the ground. He apparently expressed concern about the "straight channel" and asked if it were possible to shorten the length of the proposed culvert which is presently 80'. These comments are apparently based upon the revised plan attached to Ms. Stockwell's letter which continues to ignore the only DEP field determination of a stream within the file. Here the stream is attempted to be redirected even further upstream from its natural course which increases the likelihood even further of flooding in the area at the beginning of the proposed culvert, no matter how deep or large the proposed "riprap apron" or culvert is.

Page 2

This begs the question of how remarkably incongruous this proposed deep trenching and long, "oversized," and exposed culvert would be in the midst of a somehow enduring and natural confluence of spring, stream, shorelands and wetlands of special significance. In addition, this most recently proposed plan continues to misrepresent shoreland, wetland and septic area setbacks, is missing an existing potable well location, relocates an existing, legally defined 15' wide easement onto my property, terminating it in the middle of the stream, proposes a "garage apartment" disallowed by deeded covenant, fails to demonstrate topography which includes steep slopes and large ledge outcroppings (which also impact indicated setbacks,) fails to identify an alternative, less non-conforming building site, implies that an approved septic system plan exists or that a septic system would even be possible and proposes a dock which begins in an historic shell midden, and as per the Southport Land Use Ordinances, has no basis for "operational necessity" and does not conform to the required property line setback. Also, the Southport Land Use Ordinances specifically include a 75' setback from a tributary stream.

Will you kindly include this letter as a further letter of protest within the Traphagen file along with my previous letters of May 19, 2008, November 12<sup>th</sup> and 17<sup>th</sup>, 2008 and January 8<sup>th</sup>, 26<sup>th</sup>, 27<sup>th</sup>, February 20<sup>th</sup> and 26<sup>th</sup>, 2009 and March 10<sup>th</sup>, 2009. Again, although I realize that your physical, planned DEP inspection of the lot site conditions cannot be confirmed while there is still snow cover, I request a copy of the DEP Draft Decision and Final Decision.

With sincere thanks,



Todd Park Merolla

Cc: Mr. Jim Cassida, Mr. Colin Clark, Mary Platt Cooper, Esq.

February 26, 2009

Selectpersons of Southport

Mr. Gerry Gamage

Ms. Mary Lou Koskela

re: Traphagen dock application

Dear Mary Lou and Gerry,

I did find the copies of the Town of Southport Land Use Ordinance pages which may have information applicable to the requested dock application approval.

On Page 4-8, Part 2. "Shoreland Standards," A. Piers, Docks, wharfs...4. "No new structure shall be built on, over or abutting a pier, wharf, dock or other structure extending beyond the maximum spring tidal level for salt water, the normal high water level for fresh water or within a wetland unless the structure requires the direct access to the water as an operational necessity."

On page 8-10, under Section 8, "Definitions" & "Water Dependent Uses," & "Minor Water Dependent Uses:"

Uses which require direct access to the water as an operational necessity such as piers, docks,...."

"Minor water dependent uses are allowed in the Growth District, the Residential District and the Maritime Activities District subject to site plan review and approval by the Planning Board and the criteria of Section 5, subsection G-14." Section 5, subsection G-14 "Water Dependent Uses" "All water dependent uses must be located on a site that has been used for that purpose historically or traditionally or meets all the of the criteria below:

c. The use must conform to the Shorelands Standards, Pages 4-8 to 4-12.

e. There shall be an undisturbed vegetated buffer of at least 30 feet between the use, including buildings, parking and storage areas and non-vegetated surfaces, and any residential property line."

Page 2

A building permit was issued, based upon need, for a new 40' dock to replace his 20' dock at his nearby primary residence as Traphagen cited his ownership of boats 39' and 22' in length. This is confirmed by the Town of Boothbay. The new dock was completed in August of 2008 by Peter Cole.

Given the fact that there is no "operational necessity" demonstrated by Traphagen in his application for another new dock on Southport, I request additional review of this application by the Town of Southport Selectmen.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd Park Merolla", with a large, sweeping loop at the end.

Todd Park Merolla  
47 Cameron Point Lane  
P.O. Box 260  
Southport, ME 04576

P.O. Box 260  
47 Cameron Point Lane  
Southport, ME 04576

February 20, 2009      Application #L-24420-4P-A-N,      Southport

Ms. Beth Callahan, Project Manager  
Bureau of Land and Water Quality, DEP  
17 State House Station  
Augusta, Me 04333-0017

re: Southport Tax Map #25  
Tax lot 12-3 (formerly part  
of 12-1) Owners  
Michael E. and Diane W.  
Traphagen  
DEP Field Determination  
ID #6280

Dear Ms. Callahan:

Thank you kindly for forwarding the February 9, 2009 letter from Ms. Stockwell along with a "new plan for the Traphagen project" which addresses avoidance of the previously planned construction on my property. Also mentioned is that one of the proposed houses is not only within the 75' set back from a wetland of special significance, it is now proposed to be within a 25' setback. I am unaware of any communication from the DEP which has precipitated this letter or these changes as the unusually extreme winter weather and distance has made planned trips to Augusta to examine the records very difficult.

The DEP has recently expressed strong confidence in the engineering capability of Knickerbocker Builders, the group which is poised to gain from the construction of the anticipated approval of currently proposed plans. However, the redirection and containment of the stream which crosses my property and enters Traphagen's, as represented in the most recent revision of "Concept B" enters into the realm of smoke and mirrors. Here, the existing and legally defined (please see previously submitted copy of deed,) utility access road to my property is relocated, now making a sharp turn to the north. The stream which becomes a small, raging river for several days following a typical rain storm is now indicated to be contained by a small "shaped riprap apron" before entering a conduit, the length of which has been in disagreement among the applicant's experts.

The amount of necessary ledge blasting (in close proximity to our neighbor's well,) and the resulting need for major grade changes to accommodate this scheme, point to certain destruction and flooding of my property. In addition, the deeded driveway/utility access to my property will no longer serve its purpose, as well as the fact that it now terminates in the middle of the stream. This irresponsible scenario also eliminates some of the last surviving mature trees and specimen shrubs which would result from the previously submitted proposals. Had a public hearing for this application been scheduled, I would have been more easily able to demonstrate the realities and consequences of an approval of "Concept B" as it now stands. Barring that, there has been no required 2' interval topographical mapping of this lot which would help with providing insight to those reviewing the proposed plans. A topographical of existing conditions along with one demonstrating the various and major grade changes throughout the lot necessitated by the proposed building sites, roads, utilities and stream flow inherent with "Concept B," along with the substantial loss of some already deficient plan-indicated set backs due to steep slopes, causes this to be all the more critical to the evaluation of this proposed plan including the required consideration of an alternative building site.

The willful deceit which has characterized this application from the start, along with misrepresented setbacks, selectively missing pertinent information and missing topographical and other natural features, many of which I have brought to your attention in previous letters, necessitates my request that you please let me know when I may review this application in its unchanged and final state.

Will you kindly include this letter as a further letter of protest within the Traphagen file along with my previous letters of May 19, 2008, November 12<sup>th</sup> and 17<sup>th</sup>, 2008 and January 8<sup>th</sup>, 26<sup>th</sup> and 27<sup>th</sup> 2009. Again, although I realize that a physical, planned DEP inspection of the lot site conditions cannot be confirmed while there is still snow cover, I request a copy of the DEP Draft Decision and Final Decision.

With sincere thanks,



Todd Park Merolla

Cc: Mr. Jim Cassida, Mr. Colin Clark, Mary Platt Cooper, Esq.

(1 of 12)

P.O. Box 260  
47 Cameron Point Lane  
Southport, ME 04576

January 27, 2009

Ms. Beth Callahan, Project Manager  
Bureau of Land and Water Quality, DEP  
17 State House Station  
Augusta, Me 04333-0017  
#25

re: Southport Tax Map

Tax lot 12-3 (formerly  
part of 12-1) Owners  
Michael E. and Diane  
W. Traphagen  
DEP Field  
Determination  
ID #6280

Application #L-24420-  
-4P-A-N, Southport

Dear Ms. Callahan:

Thank you for allowing me to review the Traphagen application file today. One thing which has caused the need for more than one response throughout this permitting process is that initially I was told by the owner's realtor through advice from Lauren Stockwell that a Tier 1 variance was being applied for. Then there was mention of the need for a Tier 2 application in the #6280 Field Determination document. More recently, I was advised by Jim Cassida that clearly a Tier 3 application was being pursued. Of the information found now in the file which is new to me, I

have found the following discrepancies which might impact the DEP decision-making process:

-In a letter faxed to Chris Redmond on Sept. 6<sup>th</sup>, 2007, Traphagen attempts to document his construction of a drainage ditch across the subject lot. With letters, by his instruction, from an extremely elderly architect, a landscaper and a contractor, he attempts to confuse documentation of the replacement of an existing culvert and subsequent clean-up in the upper part of the stream at the northern edge of the property with the entire stream. The architect states that in 1983-84 "a culvert was installed under the road, and the flow therefrom was directed to a swale across your property." Mark Hamilton of Hands of Thyme writes on August 31, 2007 (sic) "In the fall of 1998 [when Traphagen purchased the house and lot,] hands of Thyme landscaping and the owners, had a very bad water problem over leach field. So we put in a culvert pipe, and dug a swale or trench to divert water away from the leach field. Then planted natural plants along the side. The plants and trees have eliminated any change of erosion issues. The ditch also captures other hillside runoff helping to keep the lower 1/2 dry." Obviously, the "leach field" which he refers to is not on the subject lot. And, there is not a leach field on my (Traphagen's from 1998-2005,) property either as there is and has always been an overboard discharge system being the case that there is ledge and very thin soil over thick, gray clay in this general area as per the required documentation to the DEP by a soil scientist. The area Hamilton refers to is, once again, at the northern edge of the subject lot which has clearly been disturbed, with the addition of some plantings and

round river stone. For this reason, approximately 15' of water course has been referred to by previous soil scientists as wetland followed by a DEP defined stream which flows, aided by a spring, into the tidal waters of a cove on Townsend Gut. (Beyond this point, if there are any spots in the stream which demonstrate less than the expected channel between clearly defined banks, this would not be surprising considering the number of plantings along the stream which were dug up and removed in 2007 by Traphagen on numerous occasions as well as the number of approximately 50' long 10" to 16" tree trunks, some weighing several tons, resulting from trees which were felled along the shoreline and dragged through the woods and through the stream with an engine-powered winch by Boothbay Tree and Landscape in both 2006 and 2007, obliterating mostly everything in their path with instructions from Traphagen to "clear the land for construction.") Larger tree stumps were hidden with piles of slash. (This can be verified with Ralph Spinney, Southport Code Enforcement Officer who called the DEP to the site.) In his letter of September 3, 2007, Neal Reny, a contractor, writes that when asked by Traphagen to give evidence of "digging a swale across the vacant lot" in November of 1998, he installed a culvert, added tailings and bank run gravel and then this was landscaped by Hands of Thyme Landscaping. I personally have spoken with Neal Reny about this and he has stated that the work involved a culvert and was certainly limited to the northernmost edge of the lot. Clearly, if Reny had created a stream bed through the vacant lot all the way to the ocean (without a DEP permit or any other permit,) as described by Traphagen, excavating many thousands of yards of

material including massive ledge outcroppings in 12 hours, his invoice for \$1,680.50 would have been quite a bargain. Not to mention all the mature trees, many over 75' tall, surrounding the stream; all at the appropriate bank grades.

-In a letter dated July 5, 2007 (please see attached,) Realtor Bruce Tindal refers to an attached survey plan with 75' setbacks from the "brook" by Leighton under the auspices of Stockwell.

-In a letter faxed to Chris Redmond on Sept. 25<sup>th</sup>, 2007, Traphagen claims that an attached USGS topographical map shows "no indication of a swale or natural drainage course across the land" and implies that the neighbors must have pressured him into thinking that what exists is a stream.

-In a letter from Lauren Stockwell to Lisa Vickers on June 30, 2008, Stockwell writes: "Hi Lisa, Thank you for coming down today to look at Michael Traphagen's site on Southport. As you requested, attached is the letter I wrote following my stream determination in February of last year. I considered the upper portion (furthest from the coast) to be wetland and the end closest to the shore to be wetland with a small intermittent stream. Again, I was not aware that the swale had been dug out by backhoe when I made my determination or I would have considered the upper end to be a ditch." As early as February 13, 2007, Stockwell acknowledged in a letter to Realtor Bruce Tindal that the watercourse meets the definition of a stream and includes, in addition the designation of a Wetland of Special Significance because it is located

within 250 feet of a coastal wetland. Further on in the letter, Stockwell writes: "DEP does not have adjacency jurisdiction next to the forested wetland as long as the disturbance is 75 feet or more from the edge of the stream and coastal wetland."

-In a letter to Stockwell from Lisa Vickers on October 7, 2008, she writes: "Based on my site visit, I estimate the stream begins in the vicinity of the picture labeled as #10 (attached) and indicated with an arrow. Please note that this is only an estimate and was determined because there is a channel between defined banks, the channel bed is primarily composed of mineral material, and the channel is devoid of upland vegetation. The area on the property that does not contain a channel between defined banks cannot be considered a stream based on the definition of 38 MRSA, Section 480-B of NRPA. By my estimate, pictures #1-8 do not contain a channel between defined banks. I don't actually start my new position until Monday but feel free to e-mail if you have any questions."

-Regarding the Passamaquoddy and Penobscot Tribes, what possible concern could these tribal governments have with the proposed disturbance of documented ancient shell middens on the Traphagen lot based upon the information submitted to them by Stockwell? Bonnie Newsom of the Penobscot Nation writes in response: "... if Native American cultural materials are encountered during the course of the project, please contact me..."

-Regarding the DEP-requested review of application response from the Maine Department of Inland

6.

Fisheries and Wildlife, dated Dec. 18<sup>th</sup>, 2008 states: (sic) "Relocation of unnamed stream (drainage)/ It appears that the resource cited as a drainage has no inland fishery habitat. Therefore it is not of critical concern for this agency." (I would also like to point out here that the subject lot, even to the casual observer, demonstrates a wide range of wildlife on a daily basis which includes deer, moose, skunks, porcupines, red fox, rabbits, red, gray and black squirrels, mink, turtles, yellow-spotted salamanders, bats, turkeys, pheasants, ducks, eagles, owls, ospreys and many other birds.)

-Regarding response to questions from Beth Callahan, Lauren Stockwell states on Dec. 2, 2008 that:

"The driveway will not be built over the stream, only the drainage will be." Here, the stream, which flows freely in it's entirety more than 9 months of the year, is once again being referred to as a "drainage." Where the proposed driveway is indicated in Concept B, the stream course is, at minimum, a Wetland of Special Significance.

Here, "the elderly perspective buyer" is considered once again as a driving force to be considered with the proposed plan. I, myself, as neither owner nor contract purchaser, have never been able to ascertain the value of this lot which has been advertised from \$449,000 to \$495,000, not knowing if any building envelope would even be possible. I have always made it clear that my intention would be to continue to leave it in its' natural state as part of my garden as has been the case in the past until Traphagen deeded the lots separately. Also, why wasn't an alternative analysis made for access and construction of a house on the

west side of Cameron Point Lane? Marty Moore, a designer, tells the DEP that he doesn't feel this would be appropriate and should not be considered.

This deals with a general construction schedule based upon the possible needs of a purported, potential buyer.

5. If ever there was a lot with the construction of proposed buildings, driveways and septic system upon it, needing wetlands delineation, this is it. Given the discrepancies, deficiencies and mischaracterizations of wetland delineation which has already occurred and the fact that Lauren Stockwell is also a member of the Southport Planning Board, I hope that the DEP might find it appropriate to designate a separate, disinterested and State licensed soil scientist with more reliable credentials for an independent wetlands analysis.

6. Aside from this question remaining unanswered, involvement and technical pronouncements by Marty Moore also represent a conflict of interest as he serves to gain from narrowly responding to the wishes of whomever pays his commission. Traphagen called upon a series of DEP personnel with a substantial number of appointments at the site until, through Stockwell, he was able to extract from an unsuspecting Lisa Vickers, a somewhat more favorable (to him,) stream designation which was arrived at by her being told that the stream was actually a "drainage" dug by a backhoe. Also in this response, Stockwell states: "According to Michael Traphagen, who also owned the lot to the north when that house was built, a ditch was dug from the culvert south towards the stream to

direct water flow to the south and away from the construction site." In fact, the Loring's built the house in 1983 and Traphagen purchased it from Ellen Loring in 1998, when it included the subject tax lot.

7. It could be shown that, most likely, less blasting would be required on the west side of the access road. A driveway running transversely from the south to the north where there is a substantial, level plateau, (please see Colin Clark,) would involve no steeper grades than the scenario proposed. Otherwise, the question is answered by stating that "The house and garage will not both fit on the portion of the lot between the access road and the stream." (Also, the proposed garage apartment is prohibited by covenant. Please see attached deed.) (And it does not appear that the neighbor's well location been considered as it is not noted.)

8. After purchasing his current home in Boothbay, across the Gut and a little further north, (and where last summer he replaced his existing 20' dock with a new 40' dock to accommodate both his 39' and 24' boats,) Traphagen sold my home on Cameron Point Lane to me minus the tax lot for which he would not accept anything less than something in the range of one half million dollars as per the realtor. What is described in this response as: "His relationship with the neighbor has deteriorated..." is a direct result from Traphagen's recording on my telephone answering machine a threat to my well being if I were to pursue issues associated with this DEP application.

-Regarding a letter in file from Danielle Betts, Project Engineer for Knickerbocker Group to Lauren Stockwell dated November 26, 2008:

Existing Conditions: Ms. Betts states: "While the property is 2.07 acres in size, it is bisected by a road. The land to the west is steeply sloped, wooded and ledgy. The land to the east of the road is the intended building site and a gravel driveway was previously installed in this location for access to the future home site and to the adjacent property." In fact, Both sides of the road are somewhat steeply sloped, wooded and ledgy. The driveway which was deeply rutted by Traphagen's tree operations, is only gravel because I put the gravel there as this is a deeded access to my property, through the Traphagen lot, necessitated in part to service the overboard discharge system along with other utilities as stone walls and my house itself prevent any other possible access. (And it does not appear that the engineers have addressed the consequences of flooding on my property as a result of the proposed, major grade changes and seemingly an attempt to direct the stream flow uphill.)

Program Needs: Ms. Betts states: "...we feel potential impacts have already been minimized since the proposed home is significantly smaller than a typical waterfront home in the area (note the size of the home on the adjacent lot, which has a footprint of 4,720 square feet, which is more representative of this neighborhood.)" Here are the facts: The footprints of the only other waterfront homes on this side of Cameron Point are approximately 2,000 sq. ft., 450 sq. ft. and 400 sq. ft. My home, if it does have a footprint of 4,720 sq. ft. was built by the Lorings in 1983 and for some reason, since it did not conform to shoreland

regulations or set-backs at the time, was finally granted a Certificate of Variance Approval on Sept. 22, 1997. (Please see attachment.)

-In a letter to Jim Cassida dated November 17, 2008, Chris Bursaw refers to his family's longstanding ownership and history concerning the subject lot, the stream and the shell midden. He maintains a certified mooring located in a spot of sufficient draft for his traditional sailboat which does not have auxiliary power. The proposed dock and float will extend sufficiently into this small cove to make access under sail particularly difficult. This represents another consequence of Traphagen's thoughtless greed.

#### Concept B

This concept, proposed by Knickerbocker Group -also with major conflict of interest problems- represents a number of contradictions: The number of feet of relocated stream is stated as being 50'. This is a very different number from what is being proposed pending an untainted wetlands delineation and reference to stream determination. While the words used here are "minimal grading" and "less clearing," what is clear is that there is a lot of existing topography and that in order to accomplish that which is stated, major grade changes would necessitate the removal of large stands of trees, all of which are in protected zones and in a Resource Protection District with the number of trees removed in excess of 4" in diameter in the required buffer zones already exceeding the maximum allowed. Contrary to what is stated, Concept B would not allow for a single tree to remain between the proposed

structures and my home. Betts states: "Also, by separating the structures, there is more distance between the two buildings so that we can gradually overcome the 4 to 6 foot grade differential. This will allow us to minimize clearing to just the areas generally surrounding each structure and the driveway." Aside from the "additional living areas for guests" which are not permitted by covenant, if one simply LOOKS at the Concept B plan, it becomes obvious that if a septic system and subsurface plumbing were to be permitted in the area shown, the tributary stream relocated, wetlands of special significance filled, the buildings built, the subsurface utilities installed and the driveways and access to the dock created, there wouldn't be much else left on the lot in terms of natural features or habitat.

Regarding the Concept B Site Plan:

The Tier 3 Freshwater Wetland Alteration and Individual Natural Resource Protection Act Permit instructions include Basic Attachments for Tier 3 and Individual NRPA Permit Applications which require as part of Attachment 9 the following: "For activities impacting a river, stream or brook, also submit the following: a scale drawing of the project location showing 2-foot contour intervals and including the location of all protected natural resources, roads, structures, bedrock outcroppings, area of extraction (if applicable,) point gravel bars (if applicable,) cross section locations and the location of the 100-year floodplain as estimated using the most recent Flood Insurance Map (FIRM.)" Not only does this site plan not show 2 foot intervals in the (pronounced) topography, but such pertinent features such as the ledge areas and steep drop-off

directly under the area of a proposed septic is not noted whereas a nearby ledge just east of the proposed garages/guest apartment building is. The 75' setback for the proposed septic field is inadequate as a 100' setback is required. The proposed driveway and potential parking (back-around) area occludes the deeded right of way to my property. The proposed culvert construction intrudes approx. 20' into my property and landscaping. The 75' shoreland setbacks are substantially inaccurate. The proposed "pier" is built into an historic shell midden. The area where flood tide enters the stream exit with resulting setbacks is missing. With authorization, I can provide the DEP with a stamped and certified survey with stream, wetlands delineation and DEP-required setbacks which are substantially more accurate than that which has been entered into the record.

I request that this letter of objection and direct response to information and proposals within the Traphagen application file be kept with the file along with other information submitted by myself including my letters of May 19th, 2008, November 12<sup>th</sup> & 17<sup>th</sup>, 2008, January 8th & 26th 2009. Although I realize that a physical planned inspection of site conditions cannot be confirmed while there is still snow cover, I request a copy of the DEP Draft Decision and Final Decision.

With sincere thanks,



Todd Park Merolla

## TRUSTEE'S DEED

**K** NOW ALL BY THESE PRESENTS, THAT We, **MICHAEL E. TRAPHAGEN** and **DIANNE W. TRAPHAGEN**, Co-Trustees of the **Metra Trust** under Trust Agreement dated May 3, 2000, with a mailing address of 1855 Cutlass Cove Drive, Vero Beach, FL 32963, for consideration paid by **TODD PARK MEROLLA** and **JOSEPH J. KRULIS** as joint tenants and not as tenants in common, with a mailing address of P.O. Box 210, Lincolnville, ME 04849, the receipt whereof We do hereby acknowledge, do hereby GIVE, GRANT, BARGAIN, SELL AND CONVEY, WITH WARRANTY COVENANTS, unto the said **TODD PARK MEROLLA** and **JOSEPH J. KRULIS**, their heirs and assigns forever,

A certain lot or parcel of land, with the buildings and improvements thereon, situated in Southport, County of Lincoln and State of Maine being Lot B on a certain Plan entitled "Subdivision of Noe and Bursaw Property, Southport, Maine, September 5, 1979, Scale 1" = 60', Richard H. Shelly, Surveyor", and recorded in the Lincoln County Registry of Deeds in Plan Book 28, Page 75, bounded and described as follows:

BEGINNING at a pipe on the shore of Townsend Gut near the southeast corner of Lot A as shown on said plan; thence South 88° 5' West a distance of 175.8 feet by Lot A to a point; thence South 88° 24' West a distance of 145.5 feet by Lot A to a pipe in a rock; thence South 9° 24' West a distance of 180 feet by land formerly of Noe and Bursaw to a bolt at wall corner; thence South 84° 08' East a distance of 102.1 feet by a stone wall and Lot C to a pipe in the corner of said stone wall; thence South 87° 15' East a distance of 287.0 feet by Lot C to a pipe in ledge; thence same course a distance of 22 feet to high water mark of Townsend Gut and thence same course to low water mark; thence northerly by low water mark of Townsend Gut to Lot A; thence westerly by Lot A to the point of beginning, containing, according to said plan, 1.69 acres, more or less.

ALSO conveying herewith the right to use a thirty-three (33) foot wide right of way from Cameron Point Road to Lot B as delineated on the aforementioned plan. The grantees shall also have the right to install and maintain all necessary utilities within said right of way and the cost of this installation and maintenance shall be apportioned equally among the users of said utilities.

SUBJECT TO an Easement dated September 22, 1983, and recorded in Book 1160, Page 254, Lincoln County Registry of Deeds, and running to Michael L. Greene and Claudia Crook Greene, owners of Lot A on said Plan, their heirs and assigns, to use the right of way as shown on said Plan during all seasons for any type of vehicular or foot traffic.

THIS conveyance is made SUBJECT to the following covenants which shall be binding on the parties hereto, their executors, administrators, successors and assigns, and will run with the land:

*Harmon, Jones & Sanford, P.O. Box 190 Camden, Me. 04843* (21)

1. That the only buildings on each such lot shall be one single family dwelling and appurtenant garage. There is to be no further subdivision of this land.
2. That no house trailers, mobile homes, campers, tents, shacks, or other shelter of temporary nature shall be maintained on said lots.
3. That there shall be no commercial use of the subject property except that a dwelling may be rented for residential use.
4. That the cost of maintenance and upkeep of the thirty-three (33) foot wide right of way on "Plan Entitled Subdivision of Noe and Bursaw Property, Southport, Maine, September 5, 1979, Scale 1" = 60", Richard H. Shelly, Surveyor", shall be apportioned twenty five (25%) percent to the Grantees and that any expense for snowplowing will be shared equitably by those using the right of way in the winter time.

ALSO CONVEYING HERewith an easement fifteen (15) feet in width over Lot C for the purpose of access by foot or vehicle over the garden road which currently runs between Ponderosa Lane and a bridge across a stone culvert situated along the property line between Lots B and C and being approximately seventy five (75) feet in length. The parties herein shall share in the cost of the maintenance of said garden path according to use by the parties. Damage to the garden path in excess of normal wear and tear shall be the responsibility of the party causing the damage. That party shall be responsible for restoring the condition of each access easement to its condition prior to the damage.

SEE ALSO a Certificate of Variance Approval from Town of Southport, dated September 21, 1997, and recorded in Book 2276, Page 182 in the Lincoln County Registry of Deeds.

BEING a portion of the premises described in a deed of Michael E. Traphagen and Dianne W. Traphagen to Michael E. Traphagen and Dianne W. Traphagen, Co-Trustees of the Metra Trust, which deed is dated August 21, 2000 and recorded in Book 2594, Page 65 in the Lincoln County Registry of Deeds.

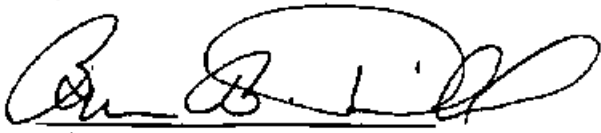
**TO HAVE AND TO HOLD** the above-granted premises with all the privileges and appurtenances thereof unto the said **TODD PARK MEROLLA and JOSEPH J. KRULIS** their heirs and assigns, forever. And we, in our said capacity, do hereby covenant to and with the said **TODD PARK MEROLLA and JOSEPH J. KRULIS** their heirs and assigns, that we are the lawful Sole Co-Trustees of the **Metra Trust**; that we have power under said Trust to sell as aforesaid; and that in making this conveyance, we have in all respects acted in pursuance of the authority granted in and by the said **Metra Trust**.

**IN WITNESS WHEREOF**, WE, the said **MICHAEL E. TRAPHAGEN and DIANNE W. TRAPHAGEN**, Sole Co-Trustees of the **Metra Trust**, have hereunto set our hands and seals this 5<sup>th</sup> day of January in the year two thousand six.

SIGNED, SEALED and DELIVERED  
in presence of:

  
Witness

  
Michael E. Traphagen, Trustee  
of the Metra Trust

  
Witness

  
Dianne W. Traphagen, Trustee  
of the Metra Trust

MAINE REAL ESTATE  
TRANSFER TAX PAID

STATE OF  
County of Lincoln

1-5, 2006

Personally appeared the above named Michael E. Traphagen and Dianne W. Traphagen, Co-Trustees of the Metra Trust and acknowledged the foregoing instrument to be their free act and deed in their said capacity.

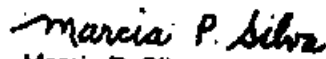
Before me,

BRUCE B. TINDAL, NOTARY PUBLIC  
MY COMMISSION EXPIRES JULY 8, 2008

  
Notary Public/Attorney at Law

Print Name: BRUCE B. TINDAL

Lincoln County Registry of Deeds

  
Marcia P. Silva, Registrar

*William H. Maier*  
*Land Use Consultant & Licensed Site Evaluator*  
1543 WASHINGTON STREET, BATH, MAINE 04530  
PHONE: 207-443-9364

November 4, 2004

Michael Traphagen  
PO Box 411  
Southport, ME 04576

RE: Ponderosa Road Property, Southport, Maine.  
(Job No. 2004-096)

Dear Mr. Traphagen,

On July 15, 2004 I conducted a preliminary site evaluation for replacement sewage disposal system installation alternatives on the subject property, a 1.69 acre lot located on Ponderosa Road, Southport, Maine. At the present time, wastewater generated from the Traphagen residence is treated in septic tank and sand filter, before the chlorinated wastewater is discharged into Townsend Gut. The discharge is licensed by the State of Maine Department of Environmental Protection. Based on this evaluation, I have determined that, due to the presence of soil conditions with bedrock or a seasonal water table at or near the soil surface throughout the entire lot area, it is not possible to install a replacement subsurface sewage disposal system installed on the lot in conformance with current replacement system requirements of the State of Maine Subsurface Wastewater Disposal Rules.

Based on this evaluation, I strongly recommend that you or any future property owner continue to maintain and use the existing, sand filter type, sewage disposal system. If you have any questions concerning my findings, or if you require additional information or assistance, please contact me at my office.

Very Truly Yours,

  
William H. Maier  
L.S.E. #32

WHM/whm

cc: Jana Caldwell, Tindal & Callahan Real Estate

002276P6182

009443

**CERTIFICATE OF VARIANCE APPROVAL**

FROM: Southport Board of Appeals

TO: Anthony P. Uzzo, Trustee under Agreement dated 8/1/85 for benefit of Ellen Loring

RE: Deed recorded in Book 1160, Page 255, Lincoln County Registry of Deeds  
Southport Tax Map 25, Lot 12-1

This will certify that the Town of Southport Board of Appeals Decision, dated November 4, 1983, a copy of which is attached hereto as Schedule A and made a part hereof, has been reviewed and confirmed, the variance approval being in full force and effect. The purpose of this decision is to confirm said variance since it was not recorded in the Lincoln County Registry of Deeds. This Notice of Decision shall be recorded in the Lincoln County Registry of Deeds within ninety (90) days of the date set forth below.

Dated: Sept 21, 1987

**SOUTHPORT BOARD OF APPEALS**

Clayton J. Pottle  
Clayton J. Pottle, Chairman  
Office #: 833-4423  
Home #: 833-4193

STATE OF MAINE  
LINCOLN SS.

Sept 21, 1987

Then personally appeared the above named CLAYTON J. POTTLE, Chairman of the Southport Board of Appeals, acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of the said Southport Board of Appeals:

Before me,

James L. Libbey  
Notary Public  
Printed Name

**SCHEDULE A**

**NOTICE OF DECISION**

Date: 11-24-83

From: **SOUTHPORT PLANNING BOARD OF APPEALS**

To: Mr. & Mrs. William Loring  
East Slope Road  
Southport, Maine

This is to inform you that the Town of Southport Planning Board of Appeals has acted on your application for a variance as follows:

Approved ☒ Denied ☐

If approved, the following conditions and safeguards are prescribed. Any violation of these conditions shall be a violation of the Ordinance.

1. A variance was granted to construct a house
2. within 25' but not less than 50' from M.H.U.
3. However, the spacing, which is in, was.
4. Compliance with the setback (25') shall never
5. be covered or enclosed and no further variance
6. shall be granted for further construction within
7. if denied, the reasons for denial are as follows:

1. the shoreline zoning regulations of the Town
2. of Southport. To allow restrictions shall
3. be recorded in the Lincoln County Registry
4. of Deeds at the expense of the owner and
5. shall run with the land.

Proof of same must be forwarded to the  
Town of Southport  
within 60 days of  
this written notice of decision

**SOUTHPORT PLANNING BOARD OF APPEALS**

Robert J. White Chairman  
P.O. Box 4193  
Southport, ME 04083

RECEIVED LINCOLN 83  
RECORDED FROM ORIGINAL

97 OCT -1 AM 8:20



# **Tindal & Callahan Real Estate**

Tel. (207) 633-6711  
Fax (207) 633-3392

32 Oak Street  
Boothbay Harbor, ME 04538

[www.tindalandcallahan.com](http://www.tindalandcallahan.com)  
[realestate@tindalandcallahan.com](mailto:realestate@tindalandcallahan.com)

July 5, 2007

Todd Park Merolla  
Joseph J. Krulis  
47 Ponderosa Lane  
Southport, ME 04576

Dear Todd and Joe:

Enclosed is a copy of the revised Survey Plan showing the brook as it now crosses the lot from your property and the Traphagen property to the cove. Terry Leighton placed the 75 foot setback area on the plan. At the time that I asked Lauren Stockwell to go down and identify the brook from the standpoint of its significance regarding wetlands etc., she told me that she felt there would be no problem obtaining a Tier One Variance from the DEP to reduce the setback to 25 feet from the brook. I feel that this would then enable one to build a house on the upper portion of the lot overlooking the brook and the water.

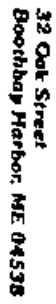
Once you have had an opportunity to review this, please give me a call with any questions you may have. I hope you are enjoying the summer so far. Hopefully we will see you soon.

Sincerely,

Bruce B. Tindal, GRI/CRS/ABR  
REALTOR

Encl BBT/jsp





**Tindal & Callahan Real Estate**

SO. MAINE P&DC 040  
05 JUL 2007 PM 4 T



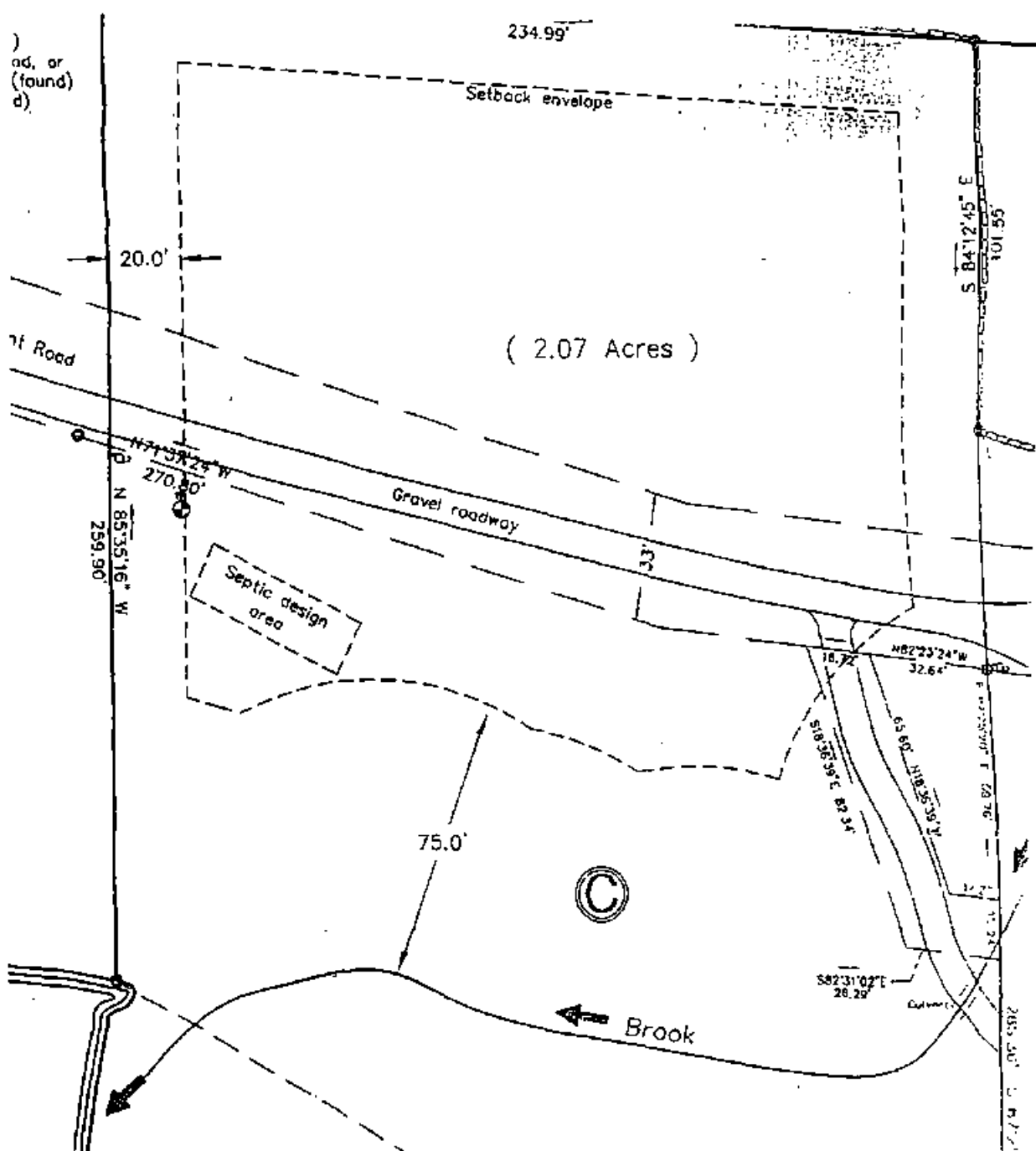
**Todd Park Merolla**  
**Joseph J. Krulis**  
**47 Ponderosa Lane**  
**Southport, ME 04576**

mc

EMP

045764333





**BOUNDARY SURVEY**  
**GEN and DIANE W. TRAPHAGEN**  
**VERON POINT ROAD**  
**WINTHROP, MAINE**

**SOCIATES**  
**Engineering**

road  
line

erry.leighton@veranoa.net

To the best of my knowledge and belief this survey has been completed in accordance with the Maine Board of Licensure for Professional Land Surveyors Technical Standards (adopted April 1, 2001).

P.O. Box 260  
47 Cameron Point Lane  
Southport, ME 04576

January 8, 2009

Ms. Beth Callahan, Project Manager  
Bureau of Land and Water Quality, DEP  
17 State House Station  
Augusta, Me 04333-0017

re: Southport Tax Map #25  
Tax lot 12-3 (formerly part  
of 12-1) Owners  
Michael E. and Diane W.  
Traphagen  
DEP Field Determination  
ID #6280

Dear Ms. Callahan:

Thank you kindly for speaking with me briefly today on the phone regarding the Traphagen application. I was glad to be able to point out to you, as I mentioned in my letter of November 17, 2008, that only half of the plot plan of the subject lot has been submitted to the DEP by the permit applicant. Please allow me to bring to your attention that Mr. Colin Clark, of your Department, has walked the land and is familiar with the general topography of the entire lot.

While, as you mentioned, the results of investigation by other State departments have not yet been received by your office, I would very much appreciate your informing me when this information has been received such that I may be allowed to see this with an appointment at your office prior to the application decision-making process. Also, as you mentioned that there is to be no public hearing, I wish to point out that there exists a number of instances of documented and conflicting technical information, many of which I delineated in my letter to your Department of November 17, 2008, of which you have acknowledged receipt, where I requested a public hearing. I am aware that the decision deadline for this application is April 4<sup>th</sup>, 2009.

Sincerely,

Todd Park Merolla



Cc: Mr. Jim Cassida, Mr. Colin Clark, Mary Platt Cooper, Esq.